

# Legislative Ethics Board

**BOARD MEMBERS:**  
REP. LAURIE DOLAN  
SHONTRANA GATES-WERTMAN  
TOM HOEMANN  
REP. LARRY HOFF  
SEN. JIM HONEYFORD  
JUDGE TERRY LUKENS (ret.)  
DAN McDONALD  
SEN. JAMIE PEDERSEN  
PAM TAJIMA PRAEGER



PRITCHARD BUILDING, ROOM 204  
PO BOX 40551  
OLYMPIA, WA 98504-0551  
360-786-7343  
www.leg.wa.gov/leb  
JENNIFER STRUS - COUNSEL  
Jennifer.Strus@leg.wa.gov

## COMPLAINT 2022 – No. 9

*In re Kraft*  
August 8, 2022

### I. NATURE OF COMPLAINT

The complaint alleges that Respondent violated the Ethics Act when she met with members of the American College of Obstetricians and Gynecologists (ACOG), Washington Chapter and referred to them as “baby-killers.” Although the Complaint does not cite a provision of the Act alleged to have been violated by Respondent, the Board has analyzed the complaint as alleging a violation of RCW 42.52.070(2)(a)(ii)(harassment).

### II. JURISDICTION

The Board has personal and subject matter jurisdiction. RCW 42.52.320.

### III. PROCEDURAL HISTORY

Complaint 2022 – No. 9 was received on April 20, 2022, and was discussed during the Board’s regularly scheduled meetings on June 14, 2022 and July 26, 2022.

### IV. FINDINGS OF FACT

1. Respondent is a member of the House of Representatives representing the 17<sup>th</sup> legislative district. She has served in the House since 2017.
2. On January 26, 2022, Representatives of the American College of Obstetricians and Gynecologists (ACOG), Washington Chapter, were scheduled to have a 15-minute meeting with Respondent to discuss two bills: HB 1730 and HB 1651.
3. Prior to the meeting, ACOG sent to Respondent’s legislative assistant (LA) three one-page descriptions of three bills which ACOG supported: HB 1730; HB 1651; and HB 1851.
4. HB 1730 would have required health plans issued or renewed on or after January 1, 2024, to include coverage for the diagnosis of infertility, treatment for infertility, and standard fertility preservation services. The bill never received a hearing.

5. HB 1651, which passed the legislature, required health plans to allow providers to bill separately for devices or professional services associated with immediate postpartum contraception.
6. HB 1851, which also passed the legislature, preserved a pregnant individual's ability to access abortion care.
7. Although the ACOG representatives never intended to discuss HB 1851 with Respondent as her stance on abortion rights was well known, they nevertheless included, in the packet of materials sent to Respondent's LA ahead of the meeting, the one page description of the abortion access bill along with the one page descriptions of the other two bills ACOG was supporting.
8. The virtual meeting was attended by Respondent, her legislative assistant (LA ) and the three representatives of ACOG: an obstetrician and two perinatal clinical nurse specialists.
9. The meeting with Respondent was scheduled for January 26, 2022, which was also the ACOG lobby day. The obstetrician had participated in lobby day for 12 years and both perinatal nurse specialists had prior lobbying experience. However, None of the ACOG representatives were professional lobbyists or made their livings working with legislators or legislative staff.
10. The meeting began with the ACOG representatives talking to Respondent's LA before Respondent got on the call. Once Respondent got on the call, all the persons attending the call said some time was spent searching for the ACOG one page bill explanations. Once the LA sent them to Respondent, the doctor began the meeting by discussing HB 1651. She indicated that she did not finish her discussion of HB 1651 because the first one-pager Respondent saw was the bill related to abortion access.
11. The ACOG representatives stated that when Respondent saw that one pager, it was like a switch flipped and according to them, Respondent stated, "I need to interrupt you, I want to talk about 1851." The doctor tried to explain to Respondent that they did not want to discuss that bill with Respondent, but Respondent interrupted and the doctor was not able to finish her statement.
12. According to the ACOG representatives, Respondent got red in the face and went on an angry rant that lasted about 2 minutes. During this time, Respondent stated something to the effect that they were in the profession to help moms and babies and instead they were killing babies. The representatives stated that Respondent called them "baby-killers" and then abruptly ended the call.
13. The ACOG representatives stated that Respondent's response was very uncomfortable and if the meeting had been in person, they would have left for their own safety.
14. According to Respondent's LA, she received the request from ACOG to meet with Respondent. The request included the one-pagers. The LA sent the one-pagers to Respondent and asked if Respondent wanted to still meet with ACOG. Respondent asked her LA if ACOG supported the three bills. When the LA indicated that they did, Respondent instructed her LA to cancel the meeting. The meeting mistakenly was not cancelled.

15. Respondent’s LA indicated that, in virtual meetings with Respondent, she makes sure everyone is on the call and then turns off her camera and mutes her microphone but still attends the meeting.
16. Respondent’s LA confirmed that there was some fussing about with the one-pagers and when Respondent opened them, she first brought up the abortion access bill. The LA did remember one of the ACOG representatives stating that they did not want to discuss that bill with Respondent.
17. When asked about a change in Respondent’s demeanor during the abortion access bill discussion, the LA stated Respondent’s demeanor did change – she became confrontational with the ACOG representatives. When asked whether Respondent ever used the term “baby-killers” the LA first replied that she had but later in the conversation stated that Respondent did not use that term.
18. When asked about the meeting with ACOG, Respondent stated that when she came across the one-pager dealing with the abortion access bill she stopped everything because she was not listening to what they were saying. She stated that she told the ACOG representatives not to take “this personally” and then stated, “how can you say you dedicate your careers to moms and babies when you support baby-killing?”
19. At that point, Respondent indicated that she stopped the meeting. When asked if she used the term baby-killers in her discussion with the ACOG representatives, she admitted that she could have but it would have been in relation to their organization but not them personally.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.070 provides as follows:

- (1) *Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.*
- (2) *For purposes of this section, and only as applied to legislators and employees of the legislative branch, “special privileges” includes but is not limited to, engaging in behavior that constitutes harassment. As used in this section:*
  - (a) *“Harassment” means engaging in physical, verbal, visual or psychological conduct that:*
    - (i) *Has the purpose or effect of interfering with the person’s work performance;*
    - (ii) *Creates a hostile, intimidating, or offensive work environment; or*

The Complaint alleges that Respondent’s reactions to ACOG’s support of the abortion access bill constituted harassment by creating “a hostile, intimidating or offensive work environment” under section (2) of the special privileges statute. In *In re Morgan*, 2020 – No. 3, the Board interpreted the term “work environment” to encompass more than just the employer-employee relationship. It stated as follows: “There are many people involved in the legislative work environment, e.g. lobbyists; constituents; agency personnel. If the Board were to interpret the term “work environment” narrowly to include only legislators and legislative staff, that interpretation would exclude from the reach of the statute many people not employed by the legislature but who are an integral part of the legislative work environment.



Therefore, the Board interprets the term “work environment” broadly to include more than just legislators and legislative staff but rather other people who are involved in the legislative environment.” Although the Board determined that a constituent could be subject to prohibited harassment, in that case the Board concluded that the conduct did not constitute harassment.

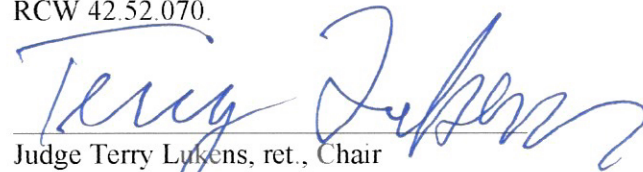
In reviewing its definition of work environment in *Morgan*, the Board has concluded that its initial interpretation of that term was too broad and exceeds what the legislature intended. The Board believes that the term “work environment” as it is used in RCW 42.52.070 was meant to encompass – in addition to legislators and legislative staff – those who make a living working with legislators and legislative staff, such as professional lobbyists and agency staff. It was not meant to encompass those persons who occasionally work with legislators or legislative staff on certain issues but who make their living away from the legislature. For those persons, the legislature is not a “work environment”.

The Board therefore concludes that the ACOG representatives are not covered by the harassment provisions of RCW 42.52.070(2), because they do not make their living working with legislators and legislative staff. This clarification in the “work environment” definition does not mean that persons like the ACOG representatives in this matter are left without a remedy. They are always free to file a complaint with House or Senate administration alleging a Code of Conduct violation.

To the extent, the Board’s holding in *Morgan* conflicts with this opinion, that portion of *Morgan* is overruled.

VI. ORDER

IT IS HEREBY ORDERED: that reasonable cause does not exist that Respondent, Rep. Kraft, violated RCW 42.52.070.

  
\_\_\_\_\_  
Judge Terry Lukens, ret., Chair

Date: 8/8/22